

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3789 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SATHWARA CHANDRIKABEN NATHALAL

Versus

SECRETARY

Appearance:

1. Special Civil Application No. 3789 of 2002
MR NEHUL L DAVE for Petitioner No. 1
MR DN PATEL for Respondent No. 1
MR RV DESAI, AGP for Respondent No. 2-3
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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 11/10/2002

ORAL JUDGEMENT

Leave to amend the prayer clause by substituting
the word "respondents" for "respondent Nos. 2 and 3".

Rule. Mr DN Patel, learned counsel for respondent No. 1 and Mr RV Desai, learned AGP for respondent Nos. 2 and 3 waive service of Rule.

2. In this petition under Article 226 of the Constitution, the petitioner has prayed for appropriate directions to the respondent authorities to appoint the petitioner on the existing vacant post of Child Development Project Officer in the department of Health and Family Welfare.

3. On the requisition of the State Government, the GPSC had issued advertisement in the newspaper dated 17.5.1997 (Annexure "A") inviting applications for the post of Child Development Project Officer. The petitioner had applied in response to the said advertisement and the petitioner was informed by the GPSC vide letter dated 15.4.2000 (Annexure "D") that the petitioner's name was placed in the general category waiting list at Sr.No. 1 and that the waiting list would remain in operation till 12.4.2002.

4. In this petition under Article 226 of the Constitution, the petitioner has made a grievance against inaction on the part of the respondents in not appointing the petitioner even though there are a large number of vacancies in the post of Child Development Project Officers.

5. In response to the notice issued by this Court, affidavit in reply has been filed on behalf of respondent No.3-Secretary, Department of Women & Child Development. In the said affidavit dated 28.2.2002, it is specifically stated that the Government of Gujarat had requested the GPSC to recommend the name of the petitioner vide letter dated 2.11.2001. However, the GPSC sent reply dated 7.2.2002 (at the hearing the correct date is shown to be 7.1.2002). It is, therefore, stated that respondent Nos. 2 and 3 have taken action for the purpose of filling in the vacant posts of Child Development Project Officer, but it was on account of the reply from the GPSC that no further steps could be taken.

6. At the hearing today, a copy of the GPSC letter dated 7.1.2002 is placed on record by the learned AGP. The letter states that although the Government had requested the GPSC vide letter dated 2.11.2001 to send the name of one candidate from the wait list on account of one candidate from the select list not joining as Child Development Project Officer Class-II, the GPSC was unable to send any name, because the vacancy was for

general category candidate and the GPSC did not have any general category candidate in the wait list and, therefore, no name could be sent from the wait list. It was further added that the wait list which was valid till 12.4.2002 contained only one name. That was of a candidate belonging to SEBC and, therefore, if any vacancy reserved for SEBC candidate was available, the GPSC may be requested to send the name of the wait listed candidate. The said letter further refers to the Government letter dated 2.11.2001 for taking steps for filling in 78 vacant posts of Child Development Project Officer.

7. It is thus clear that there are a large number of vacancies and it is also clear that the petitioner is the only wait listed candidate but the GPSC has declined to send the petitioner's name to the Government only on the ground that the vacancy in question is not a reserved vacancy and that the petitioner is not a general category candidate.

8. The learned counsel for the petitioner has submitted that although the petitioner is an SEBC candidate, that fact cannot prevent the petitioner's case being considered for appointment to a post which is not reserved for any caste. The GPSC had also stated in its letter dated 15.4.2000 (Annexure "D") that the petitioner's name was placed in the general category waiting list at Sr.No. 1. It is further stated that although the petitioner had crossed the age limit of 28 years while applying for the post in response to the GPSC advertisement, the advertisement itself had mentioned that in case of candidates possessing good qualifications and/or experience, relaxation may be given in the matter of upper age limit. The petitioner possessed the qualification of B.A. (Home Science) and experience of 5 years and 8 months as CDPO in Gandhi Ashram Child Welfare Scheme at Chanasma. It is, therefore, submitted that in view of the fact that the petitioner is the only wait listed candidate and there are 78 vacancies and one person in the select list did not join, the petitioner ought to have been offered the said post.

9. On the other hand, the learned counsel for respondent No. 1 has submitted that since the petitioner is an SEBC candidate and not a general category candidate, the petitioner has no right to claim appointment to the post of Child Development Project Officer.

10. Having heard the learned counsel for the parties,

it appears to the Court that once the State Government sends the request to the GPSC and the GPSC makes selection of candidates and prepares the select list and the wait list, the function of the GPSC is to forward such select list and wait list to the State Government and then it is for the Government to make appointments in accordance with the relevant rules. There is some substance in the grievance being made on behalf of the petitioner that the petitioner was the only candidate in the wait list, and one of the candidates in the select list did not report for duty, atleast the GPSC ought to have forwarded the wait list to the Government and it was for the Government to consider whether the petitioner should be appointed on the vacancy available on account of a selected candidate not joining the post, whether the petitioner should be considered as a general category candidate or a reserved category candidate and whether any relaxation was required to be granted in the matter of upper age limit. In view of the provisions of the Gujarat Civil Services (Classification and Recruitment) Rules, 1967 and the relevant clause in the advertisement, the State Government does have the power to relax the provisions of any recruitment rules in public interest which would also include the power to relax the upper age limit in public interest. Considering the peculiar facts and circumstances of the present case and the importance which the Government itself has been attaching to the projects relating to child development, it appears to the Court that this is a fit case for exercising the discretionary writ jurisdiction of this Court for directing the GPSC to forward the petitioner's name for the post of Child Development Project Officer since the petitioner was placed at Sr.No. 1 in the wait list of general category as informed to the petitioner by letter dated 15.4.2000 (Annexure "D") and to direct the Government to pass orders for appointment of the petitioner, when the GPSC itself had stated in its letter dated 15.4.2000 (Annexure "D") that the petitioner was placed at Sr. No. 1 in the general category wait list, and one general category selected candidate did not report for duty after appointment.

11. As regards the contention that the validity period of the wait list was over on 12.4.2002, the Government Resolution dated 20.2.1998 (Annexure "N" to the petition) clearly points out that if a selected candidates does not report for duty, or if a person appointed resigns from duty or for any reason if a post falls vacant, and the Government has sent, within the validity period of the wait list, a request to the GPSC to forward the names of the candidates from the wait

list, the GPSC shall forward such names. In the facts of the present case, the State Government had made such a request to the GPSC on 2.11.2002 as stated in the reply affidavit on behalf of respondent No. 3 and also admitted in the GPSC letter dated 7.1.2002 and, therefore, the objection about the validity period of the wait list having expired cannot be accepted.

12. In view of the above discussion, the petition is allowed. Respondent No. 1 is directed to forward the name of the petitioner as a person at Sr. No. 1 for the post of Child Development Project Officer to respondent Nos. 2 and 3 within one week from today and thereafter respondent Nos. 2 and 3 shall take further action within one month from the date of receipt of the writ of this Court or a certified copy of this order, whichever is earlier, for appointment of the petitioner on the post of Child Development Project Officer in accordance with law and in light of the observations made in this judgment.

In view of the fact admitted by the GPSC in their reply affidavit that the petitioner's name was the only one name in the wait list as stated in the GPSC letters dated 15.4.2000 and 7.1.2002, even if respondent Nos. 2 and 3 do not receive any communication from the GPSC within one month from the date of receipt of the writ of this Court, as stated above, respondent Nos. 2 and 3 shall proceed to take appropriate action in compliance with the directions given hereinabove.

Rule is made absolute to the aforesaid extent with no order as to costs.

13. At the time of issuing notice on 8.4.2002, this Court has required the petitioner to deposit a sum of Rs.1500/- by way of costs of the petition. It is obvious that the said order of costs was a conditional order in the sense that if this petition were to fail, the amount would be paid over to the respondents, but now that the petitioner has succeeded, it goes without saying that the said amount of Rs.1500/- shall be refunded to the petitioner by an account payee cheque in favour of the petitioner.

Direct Service is permitted.

(M.S. Shah, J.)
sundar/-